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REMARKS

BY

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BEFORE THE

AMERICAN BAR ASSOCIATION,

STANDING COMMITTEE ON LAW AND NATIONAL SECURITY

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SUMMARY

Under specific laws and guidelines, the FBI has a duty and responsibility to investigate those internal groups who pose a genuine terrorist threat to this Nation.

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My introduction today reminded me how meaningful introductions can be to those of us who are going to stand up and face an august body--and truly the term august body qualifies this morning. In fact, I am reminded of a story about former judge Walter Pettis Ewing, of the Fifth Circuit, who was asked to make the annual address at a civic club 30 miles east of Tuscaloosa, Alabama. Judge Ewing tells about getting in the car late in the afternoon traveling with his wife to the civic club. When they got there, the sun was setting. His host came out, greeted him, and they went into a reception, where everyone was very warm and cordial, just like they've been here this morning. Judge Ewing went into the banquet, sat down, and had a lovely meal. Finally, the master of ceremonies got up and proceeded to wax eloquent, as you have this morning, and told all these marvelous things that they really didn't want to hear about Walter Pettis Ewing--told them all--and then, at the end of the introduction, he said, "It now gives me great pride to bring to you one of America's great living patriots, the Honorable Walter Pettis Ewing"--and the place thundered in applause. Judge Ewing got up and made his remarks, and he was interrupted by applause several times during the course of the speech--which he thought, of course, was absolutely perfect. When he finished the speech, he received a rousing, standing ovation. At last he said his good nights, and he and Mrs. Ewing got in the car and headed back to Tuscaloosa. They drove ten miles, and Mrs. Ewing hadn't said a word but Judge Ewing's heart was filled to overflowing--he was just absolutely about to explode with it. Finally he turned to

his wife, and he said, "Mary Beth, how many great living American patriots do you believe there are?" And she said, "One less than you think there is, Walter."

So, after your kind introduction of me, I can only say that I'm knowledgeable enough to realize, Joe, that you've done it before.

And it's delightful to be here. When I was preparing to address this truly august body, I was well aware that I would meet people who were knowledgeable in the law. What I didn't expect was that these people would include a former United States Attorney; a former United States Department of Justice official, Don Santarelli; the United States Attorney's wife; one of my former law clerks; my neighbor, Steve Sussman, and his brother from Houston; and the special conglomeration of people that I have here. So it bodes well that I have thought about the things I want to say this morning--and I warn you that I'll be reading some of my notes because I want to be precise about the things that I am discussing with you, and because I've chosen to talk with you about domestic terrorism. I think it is particularly meaningful to me that the Minister of Justice is here because, of course, he is acquainted with the problem of domestic terrorism. All of us know that terrorism tears at the fabric of society and shakes the assurance that our citizens have in the peaceful continuity of Government in our way of life. The FBI is extremely concerned about domestic terrorism--terrorism at home, terrorism that affects us directly--and we have made a strong commitment to countering it.

Though few in number, terrorist groups can have a profound effect, and do have a profound effect, on all of us in the United States. We all recognize that a terroristic act performed in one place could have been performed in another. And what strikes terror in the hearts of people in one place affects the rest of the country; that is particularly true in an age where the media can bring us, almost instantly and certainly on a continuing basis, the visual and aural impact of a terrorist event. We not only read about it, we see it and we hear it. This coverage has been described by some people as guerrilla theater.

The people in terrorist organizations may, in everyday life, appear to be people who are very strong in their opinions, but they are, in fact, part of an infrastructure that supports and shields operations to carry out coordinated, unprovoked assaults on both individuals and institutions. The FBI has long recognized their potential for violence, and when President Reagan designated us as the lead agency to deal with domestic terrorism in 1982, we immediately made it a national priority program, along with white-collar crime, organized crime, and foreign counterintelligence.

I'm happy to report that, generally, from 1982 on, terrorist incidents in the United States have steadily declined. And we continue to review all terrorist activities and actions that occur to be sure that they are properly categorized. For example, incidents listed in 1986, as "suspected terrorist incidents might now in 1988 be reclassified as "confirmed

terrorist incidents." So we never stop gathering or analyzing information, and we continue to seek a full and complete and valid evaluation of what actually happened. For instance, early in 1988 I reported that there had been no terrorist incidents in the United States in 1988, although we were still investigating bombings in Puerto Rico. One month later-- not quite a month later--our terrorism analysts determined that two of the Puerto Rico bombings were, in fact, the work of terrorists.

Today I would like to talk to you about specific guidelines that cover our terrorist investigations and about our responsibility to investigate those groups--and I emphasize the term groups--groups who pose a genuine terrorist threat to this Nation. I want to discuss with you briefly the guidelines on domestic terrorism, discussing them, if I can, legally or in a legal fashion; then I want to talk to you about the guidelines themselves and illustrate their use through a particular case which will be of some interest to you.

Briefly, terrorism is defined as the unlawful use of force or violence against persons or property to intimidate or coerce a government or its citizens in order to further political or social objectives. Essentially, of course, the FBI deals with two types of terrorism: international and domestic. And I want to restrict my remarks this morning to domestic terrorism, those groups who operate entirely within the United States and who direct their illegal activities to elements of our Government or our population. The FBI therefore, defines and acts on the activities of terrorists as crimes--and we deal with them

essentially as crimes under guidelines that relate to criminal conduct.

Now, we are not concerned with political issues. As an investigative agency, we stay completely clear of those political implications. Our responsibility is to investigate the criminal activities of terrorist organizations whose end is to alter or affect our society or our Government. The FBI, therefore, is bound--and I would use the word bound--to strictly observe the Attorney General's domestic security guidelines and terrorism guidelines; if we do not carefully abide by those guidelines we are violating our responsibility.

In 1976--and I take you back historically to gather your attention to how these guidelines came about--then Attorney General Edward Levy established these Attorney General guidelines, setting parameters for the FBI's counterterrorism investigations. These Attorney General Guidelines were modified in 1983 by the then Attorney General William French Smith. To this day, the current guidelines are under constant review, both within the Department of Justice and within the FBI.

The Attorney General Guidelines clearly point out that the FBI's responsibility to investigate domestic terrorist groups arises "when facts or circumstances reasonably indicate that two or more persons are engaged in activities or an enterprise for the purpose of furthering political or social gains through activities that involve force or violence or violations of our criminal law." If these conditions exist, then the FBI may initiate investigation.

It's obvious just from reading that portion of the guidelines why so much controversy is generated by terrorism investigations: when two or more persons are engaged in an enterprise for the purpose of furthering political or social goals through activities that involve force or violence, they are obviously treating a political situation that necessarily can't separate itself from the groups that they are investigating. By its very nature, a terrorist action is a controversial and very difficult area to investigate.

Therefore, before a domestic terrorism investigation can be opened, the guidelines require that the FBI consider four different factors: first, the magnitude of the harm posed by the group must be considered; second, the likelihood of unlawful or violent acts actually occurring; third, the immediacy of the threat; and finally, the possible harm that the investigation itself poses to the right of privacy and of free expression.

Then, after an investigation is opened, the FBI has a responsibility to control it carefully. Now, as I will discuss in a moment, we don't bear that burden alone. There is a sharing of that responsibility.

You will be interested to know or to remember what you probably already know, that the Director of the FBI is charged with the responsibility of authorizing domestic terrorism investigations. But he can designate an appropriate Assistant Director for the same purpose--and the Assistant Director who is appointed and designated by myself and by my predecessor is the Assistant Director for the Criminal Investigative Division in the Bureau.

Following authorization, the FBI immediately notifies the Department of Justice's Office of Intelligence Policy and Review of the case opening. Thereafter, that original investigation may continue only 180 days unless there is both a renewal of the request and an approval of the request to continue the investigation. Again, only the Director of the FBI or his designate--in this case it would be again, the Assistant Director of the Criminal Investigative Division--may re-authorize the continuation of the investigation. And, once again, their authorizations go back to the Department of Justice's Office of Intelligence Policy and Review for its scrutiny.

The guidelines also require the annual review of each case to ensure that the threshold standard is satisfied. The guidelines further require the FBI to report the progress of our investigation to the same Department of Justice's Office of Intelligence Policy and Review no later than 180 days after we have opened the investigation. Therefore you can see that there are two tie-ins. There's 180 days for the original; if it's going to be renewed, then it has to go through the same procedure with the same clearance and review by the Department of Justice; thereafter, at the end of the year, it will have to do the same thing all over again. So these policies and these guidelines are strictly followed.

Once open, our investigation then focuses on the criminal enterprise, and I emphasize that, on the criminal enterprise rather than on individual participants and specific criminal acts. I know you can see the transition; you are lawyers--you know the transition that takes place there.



We are authorized to determine, first of all, both the membership of the criminal enterprise and others who knowingly are acting to further that enterprise. Second, we can look at the financing of the enterprise itself, the geographical dimension of the enterprise, and finally the past and future goals of the enterprise--the goals, that is, in connection with its terroristic ambitions and activities.

Briefly, those are the guidelines which govern domestic terrorism investigations.

Now, I would like to describe to you - just briefly - a specific example of our domestic terrorism investigations and lay out before you the significance of this kind of activity. This past week, a trial in Fort Smith, Arkansas ended and resulted in a verdict of not guilty for people who in this particular circumstance, were judged to be participating in protected activity under the Constitution.

This case concerned a group called The Order that espouses a white supremacist philosophy. You are probably familiar with this group and its criminal history.

Its founder, Robert Matthew, recruited members from a relatively new and unheard of ultra-right groups like the Aryan Nations or The Covenant, the Sword and the Arm of the Lord, and from other more traditional extremist organizations such as the Ku Klux Klan and neo-Nazi groups. His intent was to establish an independent white supremacist country by seceding with several of the Western States.

To that end, The Order began a criminal campaign against ZOG or Zionist Occupation Government, its name for our national Government. The Order's crimes, I believe, are too numerous to list--they go to several pages--but I'd like to characterize them for you.

In its formative year, 1983, members of The Order were involved in a bank robbery, robbery of a pornographic book shop, and a gun-point robbery of an armored car.

In 1984, they staged two armored car robberies; bombing of a Jewish synagogue; the murder of a suspected informant; the one that you are, I am sure, most familiar with, the murder of Denver talk-show host, Alan Berg; a shootout with FBI Special Agents in Idaho; and a gun battle with other Special Agents in Oregon.

In December of 1984, Robert Matthew was killed in a battle with arresting Agents during a siege of Whidby Island, Oregon. One fugitive, David Tate, shot and killed a Missouri highway patrolman and wounded another during a routine traffic stop.

Between October of 1983 and March of 1986, a little over three years, 38 members of The Order were arrested for various crimes and for possession of automatic weapons, silencers, explosives, and poison, all of which were seized. As you know, many indictments were returned in the cities around the country, and those cases were and are being tried.

A case that really broke this group wide open was a 1985 20-count RICO indictment charging over 55 criminal acts--

and, of course, you are aware that in RICO indictments you have to have pretty substantial criminal acts to serve as the basis for the prosecution under the RICO Statute. These criminal acts included counterfeiting, armed robbery, and murder, and led to the conviction of the 10 key members of the group. The sentences ranged from 40 to 100 years. Yet--and here is the beauty of our constitutional procedures--this past week members of this group were found not guilty--because they were judged on the merits of their particular case--not on their politics, not on their past record.

I give these examples to you briefly because it seems to me that whether we're dealing with domestic terrorism, which I've discussed here or international terrorism, which involves such groups as El Rukn in Chicago, we are dealing with a highly sensitive and very difficult area of investigation. I don't come to you on my knees begging for understanding, but I think intellectually you will accept the fact that the FBI has a very difficult responsibility and a very sensitive line to walk when it undertakes terrorism investigations.

All of us believe deeply in a constitutional form of Government. All of us honor and treasure our right to speak freely and to express ourselves freely. All of us know that law is the basis for freedom; that law is the basis of our freedom of speech; and without the one, we cannot have the other. So as lawyers, constitutional lawyers or otherwise, we have an absolute obligation to protect those rights which we believe are absolutely essential in a free society.

Consequently, when we are dealing with these things, we need to be certain that the Bureau approaches them always in a fashion that is truly competent and truly professional. Whether a particular terrorist group happens to fall, the Bureau's responsibility is to deal with it without discrimination on the left-hand side of the political spectrum or the right-hand side of the political spectrum and with complete and careful efficiency.

The statutes require us to act in such a way; the Constitution requires us to act in such a way; and I believe we should forever be reviewed to ensure that we always do act in such a way. Although there are times when the Bureau seems beleaguered by carpers who interrupt operations with endless demands for explanations, I don't resent these critics at all. I think their demands are quite proper. I think that the price of freedom is eternal vigilance, and that includes always looking again at how you've undertaken your responsibility under the law.

I've been privileged to come here this morning and discuss these sensitive matters with this group of fine lawyers. And I thank you for your attention.